UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/182/Add.2
26 March 1990

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Thirty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Seventh periodic reports of States parties due in 1989

Addendum

ITALY */

[19 February 1990]

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*/ In accordance with the recommendation of the Eleventh Meeting of States parties to the Convention on 29 April 1987 relating to the periodicity of reporting under article 9 of the Convention which was endorsed by the Committee on the Elimination of Racial Discrimination at its 827th meeting (thirty-sixth session), on 9 August 1988 (see: A/43/18, para. 24 (c)), the present seventh periodic report contains a brief updating of the fifth and sixth periodic reports of the Government of Italy (CERD/C/156/Add.1).

GE.90-15945/1888B

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Introduction

1. The present report, the seventh in the series, consists of an updating of the information and an account of the most important developments concerning the application of the Convention in Italy in the period 1987-1989. The point of reference and starting point in the drafting of this report was the content of laws, decrees and circulars; the latter have helped to clarify the legal content of these texts with regard to racial discrimination.

A. Linguistic minorities

2. The various legislative proposals concerning the protection of linguistic minorities were referred to in the fifth and sixth reports, in 1984 and 1986. These proposals have been organized into a unified text setting out the guiding principles. The relevant bill (No. 612), has been submitted to the new legislature and is currently under consideration by the Chamber of Deputies. The Assembly has already completed its preliminary discussion of the general outline and will now take up the substance.

3. With regard to observance of the general principles governing the use of minority languages, there are two interesting decisions of the Constitutional Court; the first (Decision No. 0555 of 1988) revoked the provisions of article 5 of Law No. 86 of 26 March 1986, which did not observe the principle of bilingualism in the case of the inhabitants of the Trento electoral district. Another decision reaffirmed the principle that the protection of linguistic minorities is a fundamental principle of State legislation as an expression of the guarantees provided for this purpose in article 6 of the Constitution. In accordance with this principle, this decision revoked certain provisions of articles 20 and 21 of Law No. 210 of 17 May 1985, which did not provide for the application of the revelant laws in force in the autonomous Province of Bolzano with regard to proportional ethnic representation and parity of languages.

1. German-speaking minority

4. A draft constitutional law, a parliamentary initiative (Senate Proceedings No. 136), is currently under consideration by the Senate First Commission, meeting as a consultative assembly. It provides for "constitutional legislation in favour of the German-speaking inhabitants of the Valle d'Aosta". This draft law envisages the introduction of a number of rules amplifying the special status of the Valle d'Aosta. The aim is to extend to the small community of German origin, known as the Walsers, which lives in the Valle d'Aosta and is confined to the communes of Gressoney-Saint Jean, Gressoney-la Trinité and Issime, forms of protection similar to those provided for the minority of French origin.

2. Slovene-speaking minorities

5. The previous report referred to Bill 1016. With the end of the legislature the bill lapsed and the Government has now prepared a new outline bill entitled: "Measures in favour of the Slovene-speaking people of the Provinces of Trieste and Gorizia and those of Slavic origin of the Province of Udine". The protection provided for in this bill relates to the special

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features which differentiate the people of the Provinces of Trieste and Gorizia from those of the Province of Udine; the latter, while fully integrated in the national community, maintain particular traditions and idiomatic usages which warrant protection.

3. Ladin-speaking minorities

6. The regulations designed to provide specific advantages for this minority are currently the subject of a bill introduced by Senator Riz (Senate Proceedings, No. 324) and of a bill introduced by Deputy Ferrandi (Chamber of Deputies Proceedings, No. 1125). The two provisions have been allocated in the consultative assembly to the First Commissions of the two chambers of the Parliament.

B. Evolution of legislation and jurisprudence

7. In concluding this outline of the safeguards provided for linguistic minorities, mention should be made of certain provisions that have contributed to the evolution of existing legislation and jurisprudence.

1. Minors

8. One of the measures taken by the National Council for Minors was the holding in Rome, on 23 and 24 February 1989, of an interesting seminar on the topic "The foreign minor in Italy", which discussed the situation and the social needs of foreign minors, especially those from the third world and Latin America.

2. Nomads

9. Finance Act No. 67 of 11 March 1988, provides in article 29, paragraph 3, that at least 50 billion lire should be set aside for loans which may be made to communes through the Deposit and Savings Bank to equip certain areas for nomadic minorities to live.

10. The Ministry of the Interior, by its decree of 7 April 1989, identified those communes which were interested in preparing the infrastructure needed to equip such areas. The following regional laws were enacted to provide specifically for nomads:

- Sardinia, Regional Law No. 9 of 9 March 1988 entitled "Protection of nomadic people and their culture";

- Tuscany, Regional Law No. 17 of 12 March 1988 entitled "Measures for the protection of the Romany people";

- Friuli-Venezia Giulia, Regional Law No. 11 of 14 March 1988 - "Legislative provisions for the protection of the Romany culture in the territory of Friuli-Venezia Giulia autonomous region".

3. Foreigners and foreign workers

11. Laws to be noted under this heading are: Law No. 943 of 30 December 1986, establishing "legislative provisions for the hiring and treatment of non-Community immigrant workers, European Community and to prevent clandestine immigration", and Law No. 81 of 16 March 1988 which extends the time-limit for regularizing the situation of clandestine workers. This law was the most homogeneous piece of legislation on foreigners at the time. Article 1 provides that, in conformity with ILO Convention No. 143 "concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers" (ratification and implementation Law No. 185 of 10 April 1981), the State shall accord all non-Community workers who are legally resident in its territory, as well as their family members, equality of treatment and full equality of rights with Italian workers. It also recognizes their entitlement to social and health services, their right to preserve their cultural identity, and their right to schooling and housing in conformity with the provisions governing their use. Article 4 also recognizes the right to family reunion of such workers "who are legally resident and employed".

12. Attention is drawn, in the first place, to the principle that aliens and citizens enjoy equality as workers and that this equality extends to members of the alien worker's family. Secondly, it is pointed out that the equality of opportunity and treatment is in respect of a set of social rights whose realization is the responsibility of central bodies (arts. 2 and 3) such as the national council and the Ministry of Labour commission, and local ones, the regional councils in particular. A specific task of the regions is to further cultural aims so as to encourage the integration of aliens into the Italian community through provision of courses in the Italian language and culture and training and work adaptation courses, and by enabling them to preserve their national cultural identity (through special instruction in the language and culture of origin, "similar in all respects to the teaching provided for the children of workers from EEC countries and for the children of emigrant workers who return to Italy") (art. 9).

13. Despite the positive results of the application of Law No. 943 of 30 December 1986, difficulties have arisen because of the inadequacy of the restructuring of the administrative agencies called for by the law. In order to remedy this deficiency and establish regulations more favourable to the protection of non-EEC aliens and stateless persons, Decree Law No. 416 of 30 December 1989 (Gazzetta Ufficiale of 30 December 1989) was passed and entered into force. This law is entitled "Emergency legislative provisions governing political asylum, entry and stay of non-EEC aliens and stateless persons already in the territory of the State".

14. Article 1 of this decree law deals with political refugee status. The Government is required to organize within 60 days procedures to govern recognition of this status. The same article provides that entry into Italy is not authorized for an alien who intends to apply for refugee status if he has already been recognized as a refugee in another State or if he is arriving from the territory of a State which has acceded to the Convention relating to the Status of Refugees of 28 July 1951 or if he has resided for more than two months in another State where he has been granted asylum. It is also

stipulated that a person shall not be allowed entry into Italy if he has previously been convicted for a criminal offence, if he constitutes a threat to the security of the State or if he belongs to any association such as the Mafia or which engages in drug trafficking.

15. Article 2 establishes the principle that non-EEC aliens may enter Italy for purposes of tourism, study or work either as wage earners or for self-employment.

16. Article 3 contains rules governing the admission into Italy of aliens of specified categories and the issuance, where necessary, of the appropriate visa.

17. Article 4 provides that aliens who have entered Italy legally and who hold a residence permit may reside in Italy. Such a permit is not required for aliens who enter Italy for purposes of tourism, for the period and under the conditions stipulated in their visa or, if there is no visa requirement, for a period not exceeding three months from their arrival at the frontier.

18. Article 5 provides that the alien concerned must be given notificaiton of all measures concerning his entry, stay or travel, as well as a translation thereof into a language which he understands.

19. Article 6 specifies the formula for registration in the civil register of "aliens holding residence permit" who are therefore entitled to be registered in the civil register of the commune where they reside, in accordance with the regulations applicable to Italian citizens.

20. Article 7 establishes rules covering the expulsion of aliens. Any alien who has been convicted for a serious violation of criminal law, who has violated any provision of the laws relating to entry into and stay in Italy, or who is guilty of a serious violation of monetary, customs, fiscal regulations or of regulations concerning protection of the nation's artistic heritage, may be expelled. In addition to these regulatory provisions concerning the procedure for execution of expulsion measures, article 8 provides for the possibility of an appeal by the person concerned against the decision, to the regional administrative tribunal of the place where he has chosen to reside.

21. Articles 9 and 10 grant to citizens of non-EEC countries who are already in Italy the right to have their stay and any self-employed work in which they may be engaged regularized. Citizens of non-EEC countries may thus register with the appropriate health unit and be insured with the national health service. In addition, under article 10, citizens of non-EEC countries and stateless persons who are in Italy on 1 December 1989 may be authorized to engage in commercial activities provided they request regularization of their stay.

22. Lastly, in order to ensure that the benefits of the new law are in fact extended to the categories specified, articles 11 and 12 prescribe special types of advertisement to be used to publicize the regularization procedures and provide for the recruitment of 200 social workers.

4. Family reunion

23. The problems of family reunification, which affect minors in particular, are difficult to solve notwithstanding the most recent regulations issued by the Ministry of the Interior to implement article 4 of Law No. 943/1986. This law defines for the first time the concept of an alien's family members (reference was made to this concept in the single law No. 797 of 30 May 1955, in connection with the payment of family benefits in respect of dependants of a resident alien): these are defined as the latter's spouse and children.

24. This is a right enjoyed by foreign workers. However, it is a conditional one, since the worker must be in a position to ensure normal living conditions for these dependants. The decision as to whether the conditions are "normal", compared presumably with those of Italian citizens, is taken by the Ministry of the Interior which takes into account the size of the worker's income and the availability of housing and, after consulting the competent central police office, issues an authorization, whereupon the Ministry of Foreign Affairs may grant an entry visa for purposes of family reunification (see, in this connection, Ministry of the Interior circular No. 559/443/186378/5/11/3/1/2/I Div.) of 7 October 1988.

25. It should be noted that, in order to prevent nullification of this right, most international instruments make express provision for its application (European Convention on Human Rights, art. 8; Social Charter, art. 19 and annex; International Covenant on Civil and Political Rights, arts. 17 and 23; International Covenant on Economic, Social and Cultural Rights, art. 10; and European Convention on the Legal Status of Migrant Workers, art. 12). The right is also clearly established in all the European Community legislation (Council Regulation No. 1612/68 of 15 October 1968, amending Regulation No. 312/76 of 9 February 1976, art. 10). The Italian legislator appears to have drawn on the Community regulations, because EEC workers must have "housing which is considered normal for Italian workers in the region where he works". The object of the Community rule is to prevent any distinction being made between local workers and those from other member States, but it is also applied to a broader group of potential beneficiaries, in particular children under the age of 21 and dependant children, irrespective of their nationality.

26. Article 4 of the 1986 law must be applied in a manner consistent with the rules of international law, and particularly the rules of a humanitarian nature, so as not to betray the purpose and meaning of those rules. A family member who fulfilled the requirements upon entering Italy is entitled, after one year of continuous residence, to apply for a work permit, without being required to have a special visa, and to enjoy the same treatment as that accorded any worker from a non-EEC country. The protection of the family provided for by the international instruments is also intended to prevent any unlawful removal or expulsion measures: the right of persons to protection of their family is indeed a fundamental right and any provision failing to take this into account and having the effect of severing essential affective links would undoubtedly be unlawful. Similarly, as is provided in ILO Convention No. 143 (art. 8, para. 1) and in Law No. 943 (art. 11, third para.) not only does the loss of employment not justify revocation of the residence permits of

the worker and the members of his family, which would result in their having to leave the country, but any measure involving the deportation of the foreigner would breach the principle of safeguarding the essential right of "family protection".

27. Accordingly, before taking any expulsion measures, the competent police authority must weigh their effect on the unity of the foreign worker's family, on the latter's obligations and on the rights of the children to support, education and upbringing. Observance of the international guarantees and procedures concerning human rights, referred to in Law No. 943 (art. 17, second para.) in connection with repatriation of immigrant workers who entered Italy clandestinely after the entry into force of the law (27 January 1987), and of those who would not have benefited from the regularization process (former art. 16) is all the more necessary precisely in those cases where, for any reason whatever, regular sojourn is interrupted and the members of the foreigner's family are therefore affected.

5. Access to work and to schooling

28. If the status of foreign minors is carefully studied, it will be seen that access to work and to schooling constitute two important aspects:

(a) As regards access to work, a minor who has completed his fifteenth year is recognized as being equal to any other foreign wage-earning worker in so far as his right to request regularization is concerned (former art. 16), (see Ministry of Labour and Social Welfare circular No. 3/1987, 22 January 1987). However, special forms of protection are established for minors (see in particular Law No. 977 of 17 October 1967);

(b) As regards access to schooling, while it is true that "Schools are open to all" (art. 34 of the Constitution), foreigners must nevertheless meet certain entry and stay requirements in order to enjoy the right to schooling recognized for Italian citizens.

29. Various restrictions have been placed on entry into Italy for study purposes in order to attend primary or secondary school or a university. The first of these is the issuance of an ad hoc visa. This type of visa is granted after verification that certain requirements are met, such as possession of a letter of acceptance for enrolment and study in the chosen institution and availability of means of subsistence. A residence permit is issued provided the foreigner can prove that he has medical insurance coverage for post-emergency hospital care (art. 5 of Decree Law No. 663 of 30 December 1979, reproduced in Law No. 33 of 29 February 1980). With respect to entry and stay for study purposes in general, see Ministry of the Interior Circular No. 559/443/225388/2/4/6 of 19 August 1985.

30. A foreigner already resident in Italy, provided he has a residence permit issued for reasons other than tourism and valid for not less than one year, may have this permit replaced by a study permit, for which a visa is not required. Checks will in any case be made to ascertain that there are no subjective grounds for denying this permit (this falls within the purview of the Commissioner of Police). The foreigner should also meet the requirement to have insurance coverage, or demonstrate that his medical expenses will be covered if he is the dependant of a person authorized to reside in Italy for reasons of work.

31. A foreign student who attends "a public or private Italian educational institution of any type or at any level" may engage in an occupation on a fixed-term basis for a period not exceeding 500 hours per year; Law No. 943 (art. 6) has removed an exclusion that was a feature of the strict regulations governing entry and sojourn, which, in essence, did not allow any change of residence permit unless the foreigner returned to his own country in order to obtain the required visa. Difficulties were, however, encountered and are still being encountered in implementing the new regulations, not only because students are placed at the bottom of the lists of job seekers in placements offices (arts. 6 and 5 (d)), but also because the Ministry of Labour (Circular No. 62 of 2 July 1988) has forbidden, except in special cases, the issuance of any permits during the period of "regularization" or during the subsequent period, pending promulgation of "the necessary measures for implementation" of the regulations in question.

32. When the residence permit is due for renewal, the competent police authority checks whether the student is profiting from his studies and, indirectly, whether he intends to continue them. It ascertains whether he has been successful in his examinations (three per year for university students) and whether he has been promoted to a higher level (this must be proved by submission to the police of certification by the institution). Any student not ranked at the quarterly, four-monthly or final promotion council meetings because of absences or who has repeated a year and has not been allowed to re-enrol has to leave the national territory because renewal of his residence permit is denied.

33. The assumption that a minor is obliged to leave is more theoretical than practical, since he can claim family reasons for not doing so, i.e. that, if he were made to leave, he would be deprived of protection, protection by the authorities of his own country in particular.

34. A bill (No. 2916) to render more flexible the procedures for the enrolment in Italian schools in Italian territory of students from abroad or from foreign schools in Italy was tabled jointly with the Ministry of Foreign Affairs on 25 June 1988.

6. Health assistance rights

35. As was mentioned in the previous report, the existing legislation contains no provision establishing distinctions on grounds of race as regards the right of foreigners to health care. Law No. 943 of 31 December 1986 mentioned above, as well as the Decree Law of 30 December 1989, reaffirmed the principle of equality of treatment with Italian workers, non-EEC workers legally resident in Italy and those who have regularized their status. These laws permit the application to them, not only of the regulations concerning entitlement to health care on Italian territory but also of those arising from Presidential Decree No. 618/80 concerning health care for Italian citizens who are temporarily in other countries for employment reasons.

36. When this regulation was put into effect, a problem arose in connection with the assimilation of all foreigners (including those resident on Italian territory) to Italian citizens, when they do not have worker status. Such persons although they are resident in Italy, are still required to pay, for

enrolment in the national health scheme, an income-related contribution of not less than 750,000 lire. In order to overcome this difficulty, the Ministry of Health is now preparing legislation designed to ensure full assimilation of foreigners with Italian citizens as regards the health care provided by the national health service and to impose on foreign citizens resident on Italian territory an obligation to pay contributions. This draft legislation also calls for the provision, exclusively for foreigners resident in Italy who lack sufficient economic resources, of free health care by the national health service and for the cost thereof to be recovered from the diplomatic or consular missions of the countries of which they are nationals. Article 10 of the Decree Law of 30 December 1989 temporarily exempts foreign workers who intend to regularize their sojourn in Italy from the requirement to pay health care contributions for 1990.